

COMMISSION HEARING OFFICER DIRECTIVE

ADMINISTRATIVE MATTERS	<input type="checkbox"/>	DATE	<u>August 29, 2006</u>
MOTOR CARRIER MATTERS	<input type="checkbox"/>	DOCKET NO.	<u>2006-92-WS</u>
UTILITIES MATTERS	<input checked="" type="checkbox"/>	ORDER NO.	<u>N/A</u>

HEARING OFFICER: Charles L.A. Terreni

DOCKET DESCRIPTION:

Application of Carolina Water Service, Inc. for Adjustment of Rates and Charges for the Provision of Water and Sewer Service

ADMINISTRATIVE MATTER UNDER CONSIDERATION:

See Hearing Officer Action below for detailed description of matters under consideration.

HEARING OFFICER ACTION:

On August 24, 2006, the Commission was contacted by email by a Mr. Paul Hershey who requested that time be set aside during the final hearings scheduled in the above captioned case on September 6 and 7, 2006, for the purpose of receiving certain testimony from Mr. Don Long. Carolina Water Service ("CWS"), acting through its attorney, John M.S. Hoefer, objected to this request and to Mr. Long's right to present testimony at the hearing. On the afternoon of August 25, 2006, as hearing officer in this case, I issued a ruling allowing Mr. Long to testify under certain conditions.¹ This ruling was premised on the mistaken belief that Mr. Hershey was relaying a request to the Commission on behalf of Mr. Long, with his knowledge and consent.²

However, On August 28, 2006, in a telephone conference with me, Mr. Hoefer, and Nanette S. Edwards, Esquire, of the Office of Regulatory Staff ("ORS"), Mr. Long informed the Commission and the parties that he had been unaware of Mr. Hershey's request of August 24th and that Mr. Hershey had not been speaking on his behalf. Under the circumstances, Mr. Long was understandably taken by surprise by the August 25, 2006 ruling and objected to its requirement that he serve and prefile testimony by August 31, 2006, or submit to deposition on or before the same date.

Mr. Long did confirm, however, his desire to testify at the hearing and that he desired to make a presentation in some detail regarding the financial condition of CWS and/or the specific subsystem of CWS which provides him with service. Accordingly, the reasoning underlying the Order of August

¹ A copy of the ruling, and the related correspondence, is attached as Exhibit A.

² My ruling of August 25, 2006, was made without knowledge of a letter dated April 24, 2006, from Mr. Hershey in which he requested that time be set aside at the final hearing in the case for testimony from members of the River Hills Community Association ("RHCA"). This request was apparently addressed to the Office of Regulatory Staff, and was not received by the Public Service Commission. Indeed, the Commission still does not have a copy of this letter, but was informed of its existence and contents by counsel today. CWS asserts that Mr. Hershey was writing in order to cede some of the time requested for the RHCA to Mr. Long.

25th remains applicable. The interests of justice would still be served by allowing Mr. Long to testify, but also by having him give the parties reasonable notice of the content of his testimony. Mr. Long stated that he could provide a statement of his testimony to CWS by the close of business on September 5, 2006. He also clarified that his testimony would last less than one hour, not one and a half hours, as originally requested by Mr. Hershey.

CWS renewed its previously stated objections to Mr. Long's testimony. Additionally, CWS argued that Mr. Long had failed to notify the Commission of his desire to intervene in the case by the deadline stated in the Commission's Notice of Filing and Hearing of April 24, 2006. However, this objection is not valid, as Mr. Long is not attempting to participate in this hearing as an intervenor. He will not have the right to present or cross-examine witnesses, and he has not had the right to engage in discovery with CWS or the ORS. Instead, Mr. Long will participate in the hearing in the same manner as other members of the public who will appear and state their views about the case. This is a long standing practice at the Public Service Commission.

CWS also argued that Mr. Hershey had misrepresented the content of Mr. Long's testimony, by representing that it would last one and one half hours. I find that the fact that Mr. Long expects his testimony to take less than the time originally requested by Mr. Hershey will not prejudice CWS. Indeed, CWS's objections appear to have been provoked by Mr. Hershey's correspondence. Absent Mr. Hershey's email of August 24th, Mr. Long would likely have appeared at the hearing without any preconditions. Finally, CWS argues that its right to due process is impaired by the Commission allowing Mr. Long to testify. I find no ground to conclude that such a violation will occur.

Mr. Long's testimony will differ from that of an ordinary public witness only in the sense that, in Mr. Long's case, the Commission waived its custom of not allowing public witnesses who testify at a local public hearing (as Mr. Long did in Lake Wylie on June 12, 2006) to also testify at the final hearing. There is no statute, or Commission regulation, that prohibits a public witness from appearing at more than one hearing. The prohibition has merely been the Commission's usual practice, implemented for purposes of judicial economy. The Commission may, in its discretion, waive the prohibition, as it did in Mr. Long's case. In Mr. Long's case, the Commission recognized the value of his testimony, and the fact that he intended to supplement it with additional information, and waived this rule so that he could also testify in Columbia. Mr. Long was afforded no additional privileges by virtue of this ruling.

Recognizing that Mr. Long's testimony was likely to be more complex than most public testimony, my August 25, 2006 directive partially granted CWS' motion that it receive advance notice of his testimony, and ordered that Mr. Long be required to provide notice of the content of his testimony in advance of the hearing, either through prefiling or deposition. Through this order, CWS has been given the right to obtain information about a public witness' testimony that it would usually not be afforded in regard to a public witness.

I find that the interests of justice and judicial economy will be furthered by such an exchange of information before the hearing. Therefore, the conditions set forth in my order of August 25, 2006, will remain in effect, except that the deadline for Mr. Long to either prefile testimony or submit himself to deposition is extended through the close of business (4:45 p.m.) on September 5, 2006. Mr. Long also requested clarification of the prefiling requirement. In this instance, Mr. Long's prefiled testimony should give the parties advance notice of the substance and content of his testimony. It need not be

a verbatim recitation of what he will tell the Commission. Any objections to the content of Mr. Long's testimony as being in violation of this order will be disposed of at the hearing if needed.